

Judge Robert J. Bryan

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS ENRIQUE PALOMERA,

Defendant.

NO. CR14-5394 RJB

MEMORANDUM REGARDING
GOVERNMENT'S PROPOSED ORDER
GRANTING MOTION TO CONTINUE

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Michael Dion and Amy Jaquette, Assistant United States Attorneys, files this Memorandum Regarding the Government's Proposed Order Granting the pending Motion to Continue.

The defense has moved to continue the trial. The government does not object, and acknowledges that the motion sets forth facts justifying a continuance. However, the proposed order submitted by the defense does not reiterate those facts. The United States believes that, ideally, the order granting the continuance should include and re-state the factual basis set forth in the motion.

The Speedy Trial Act, 18 U.S.C. § 3161(h)(7) specifically states that no such time period is excludable unless "the court sets forth, in the record of the case, either orally or

1 in writing, its reasons for finding” the balancing of these factors and how they outweigh
2 the interests of a speedy trial.

3 If an order excluding time does not contain adequate factual findings, the remedy
4 may be draconian, including dismissal of the charges. The findings must be on the record
5 “by the time a district court rules on a defendant’s motion to dismiss under § 3162(a)(2)”
6 of the Speedy Trial Act. *Zedner v. United States*, 547 U.S. 489, 507 (2006). Where a
7 judge fails to make the requisite finding supporting the need for an “ends-of-justice”
8 continuance, the resulting delay cannot be excluded, and, as a result, if the trial does not
9 take place within the 70-day time period, the indictment or information must be
10 dismissed. *Zedner*, 547 U.S. at 508.

11 The government’s proposed order would ensure, in the unlikely event of a future
12 Speedy Trial Act challenge, that the factual basis for the continuance is unassailable.
13 Accordingly, the United States submits, as Attachment A to this Response, a proposed
14 order which recites the factual basis in the defense’s motion to continue.

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16 DATED this ____ day of July, 2016.

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18 Respectfully submitted,

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20 ANNETTE L. HAYES
21 United States Attorney

22 /s/ Michael Dion
23 MICHAEL DION
24 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2016, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

/s/ Becky Hatch
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